

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

Chambers of  
**BENSON EVERETT LEGG**  
Chief Judge

101 West Lombard Street  
Baltimore, Maryland 21201  
(410) 962-0723

January 3, 2005

MEMORANDUM TO COUNSEL RE:

In the Matter of the Complaint of Eternity Shipping,  
Ltd., et al., for Exoneration from or Limitation of  
Liability  
Civil #L-01-250

Dear Counsel:

The Court thanks James D. Skeen, Esquire, for his December 21, 2004 letter clarifying Counsel's concern regarding the briefs that have been filed in this matter. Mr. Skeen states in his letter that the following motions and briefs refer to portions of the United States Coast Guard Marine Casualty Investigation Report ("the Report") on the accident that gave rise to this lawsuit:

- (i) Claimant Tate & Lyle North American Sugars, Inc.'s ("T&L") Federal Rule of Civil Procedure 56 Motion for Summary Judgment and Memorandum in Support as to Claimant Josefina Gonzales (Docket No. 73);
- (ii) Motion of Claimant Tate & Lyle North American Sugars, Inc. for Sanctions for Spoliation of Evidence and for FRCP 37(c) Sanctions for Failure to Disclose and Memorandum in Support (Docket No. 79); and
- (iii) Third Party Plaintiffs' Response to American Bureau of Shipping's Motion for Summary Judgment (Docket No. 93).

According to Counsel, 46 U.S.C. § 6308 provides that no part of the Report is admissible as evidence in this case. In order to avoid review of the Report by the undersigned, who will be the finder of fact in this case, Counsel propose the following:

- (i) T&L will file an Amended Motion for Summary Judgment against Ms. Gonzales, deleting any reference to the Report;
- (ii) within two weeks from the date on which T&L files its Amended Motion for Summary Judgment, Ms. Gonzales will file her response;
- (iii) T&L and Ms. Gonzales will file an Amended Response to American Bureau of

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- (iv) Shipping's Motion for Summary Judgment, deleting any reference to the Report; T&L's Motion for Sanctions will be referred to a magistrate judge upon the filing of T&L's reply memorandum; and
- (v) all reply briefs in support of pending motions will be due two weeks from the date on which T&L and Ms. Gonzales file their Amended Response to American Bureau of Shipping's Motion for Summary Judgment.

The Court APPROVES Counsel's proposal, with a minor modification, and SETS the following schedule:

- (i) on or before January 7, 2005,
  - (a) T&L shall FILE its Amended Motion for Summary Judgment against Ms. Gonzales, deleting any reference to the Report, and
  - (b) T&L and Ms. Gonzalez shall FILE their Amended Response to American Bureau of Shipping's Motion for Summary Judgment, deleting any reference to the Report;
- (ii) on or before January 21st, Ms. Gonzales shall FILE her response to T&L's Amended Motion for Summary Judgment;
- (iii) on or before February 4th, all reply briefs in support of pending motions ARE DUE; and
- (iv) after T&L files its reply memorandum in support of its Motion for Sanctions, the Court will refer the Motion for Sanctions to a magistrate judge.

The Court has modified Counsel's proposed schedule only to the extent that all reply briefs are due on February 4th, rather than two weeks after the date on which T&L and Ms. Gonzales file their Amended Response to American Bureau of Shipping's Motion for Summary Judgment.

Despite the informal nature of this memorandum, it shall constitute an Order of the Court and the Clerk is directed to docket it accordingly.

Very truly yours,

/s/

Benson Everett Legg

c: Court file